

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its won  
motion as to the propriety of the rates and  
charges set forth in the tariff filings by  
Verizon – New England, Inc.,  
d/b/a Verizon – Massachusetts

DTE 98-57, Phase III

**COMMENTS OF AT&T**

On March 15, 2001, the hearing officers in this docket issued a request for comments on a letter and public notice filed by Verizon on March 7, 2002. AT&T files these comments pursuant to the hearing officers' request.

After litigating in this case for months the contours of a DSL over fiber wholesale offering, Verizon has filed on March 7 a letter and two-page "notice" announcing the expectation of a DSL over fiber wholesale offering that omits any reference to the offerings that have been litigated to date. Clearly, the Department will need additional information in order to determine whether the conditions for requiring Verizon to provide DSL over fiber on an unbundled basis, as specified in 47 CFR 51.319, are satisfied; or whether the Department should order Verizon to provide DSL over fiber on an unbundled basis even if the conditions are not satisfied (a right that the FCC has expressly reserved to state commissions as discussed below).

As AT&T's comments explain below, Verizon should not be permitted to benefit from any delay that may occur for the Department to obtain the information it needs. The Department in this case had sought to prevent Verizon from benefiting from regulatory delays by requiring Verizon to file an "illustrative tariff" which could serve as a basis for working out the details before Verizon provisions DSL over fiber. The Department should not permit Verizon's tactics to defeat its efforts. The Department should make clear to Verizon that Verizon will not be

permitted to provide DSL service over fiber fed loops to retail end users until Verizon offers the unbundled network elements to CLECs that will enable them to offer a comparable retail service. The Department should order Verizon in the meantime to provide the necessary details of its proposed offering immediately and permit the other parties to propound discovery to Verizon forthwith. Massachusetts consumers have waited long enough for competitive offerings of DSL service over fiber-fed loops.

### **Background**

For years, Verizon has been resisting efforts by the Department to promote the deployment of DSL service, in particular DSL service over fiber fed loops. As far back as September 29, 2000, the Department had determined that line sharing over fiber fed loops is critical to ensuring that all Massachusetts customers have an opportunity to obtain DSL service. *See*, D.T.E 98-57, Phase III (September 29, 2000) (“*Phase III Order*”), at 86 (“The Department is concerned that many Massachusetts customers may be shut out of the DSL market unless provisions are made to allow for line sharing over fiber-fed loops.”). As a result the Department directed “Verizon to file a tariff that would enable CLECs to place or have Verizon place CLEC-purchased line cards in Verizon’s DLC electronics at the [remote terminal] . . . and to file a tariff for feeder subloops.” *Id.*, at 87. (Placement of the line cards is sometimes referred to as the “plug and play option.”) The purpose of the Department’s order was to eliminate delays if a review of Verizon’s tariff were to wait until Verizon is ready to deploy its DSL over fiber capability. *Id.*, at 88.

Rather than filing a tariff offering plug and play, however, Verizon moved for reconsideration. In its motion, Verizon asked that it be relieved of its obligation to file a plug and play tariff. Verizon asked that it be allowed to offer “a packet-switching-type product similar to that offered by SBC Communications, Inc.” in lieu of a plug and play option. D.T.E.

98-57, Phase III-A (January 8, 2001) (“*Phase III-A Order*”), at 37. As grounds for its request, Verizon argued without any evidence that a plug and play arrangement is not feasible.

*Id.*, at 43. The Department properly denied the Verizon’s motion noting that:

Verizon neglects to cite to any document in the Phase III record or to provide any new information in support of this contention. The CLECs are correct that such a bald assertion cannot constitute grounds for Department reconsideration.

*Id.*, at 43-44 (citations omitted). In a footnote, the Department dismissed Verizon’s claims of infeasibility noting that “[a]t most, Verizon argues that plug and play ‘could’ result in administrative problems, provisioning delays, and compatibility issues.” *Id.*, at 44, n. 20.

The Department was correct to note that Verizon’s alleged infeasibility claim was largely a makeweight argument based on “administrative” problems of Verizon’s own invention. It’s no secret why Verizon has been dragging its feet introducing DSL over fiber. Like the rest of the ILECs, Verizon is engaging in classic monopoly behavior; it is using its monopoly control over the loop to withhold DSL over fiber until it can obtain the right to price DSL over fiber above its long run economic cost.<sup>1</sup> Put simply, Verizon’s foot dragging in Massachusetts is part of its corporate strategy to hold consumers, including Massachusetts consumers, hostage in order to extract favorable regulatory concession from federal and state regulators.

At the same time that the Department was considering options for DSL over fiber in this docket, the Department has been determining in D.T.E. 01-20 the costs and the rates for the

---

<sup>1</sup> Such conduct is classic monopoly behavior because it rests on the ability of the monopolist to cause price increases by withholding supply. Participants in competitive markets do not have that luxury; if they withhold supply, other providers will step in. Indeed, Verizon’s willingness to withhold deployment of DSL over fiber puts a lie to the contention that a DSL over fiber service faces a serious threat from intermodal competition (*i.e.*, competition from cable modems). If that were true, Verizon would be deploying DSL over fiber as long as it is economic to do so at the prices that cable modem competitors charge. Thus, Verizon’s failure to deploy DSL over fiber means either (a) it is not economic to do so, because it can be provided to the same end users more cheaply by cable modem, or (b) Verizon is not worried that its prospective purchasers of DSL over fiber will (or can) choose the cable modem alternative. Given the huge market of end-users unable to reach cable modems, “alternative (b)” seems to be the likely explanation, demonstrating Verizon’s monopoly control over this vast market.

unbundled network elements that Verizon is expected to offer to CLECs. Verizon, however, did not propose any rates for hybrid fiber and copper loops capable of providing DSL service. Consistent with Verizon's tactics of withholding the provision of DSL over fiber, Verizon contended that there is no such thing. AT&T put in evidence describing the equipment necessary to offer DSL over fiber and proposed rates for it.

Meanwhile, in this docket, due to the willingness of the Department to insist on the filing of a proposal to offer DSL over fiber at wholesale to CLECs, Verizon finally filed, on March 12, 2001, an illustrative tariff and a "Description of Verizon Massachusetts' Illustrative Tariff for Packet at the Remote Terminal Service (PARTS) with Option for CLEC Provided Line Cards." In that filing, Verizon provided terms and conditions related to two different offerings. In one offering, Verizon provided "a data transport service between a demarcation point at the end of the end user's premises and a customer specified termination at the CLEC's arrangement in the end user's serving wire center." Illustrative Tariff DTE 17, Part F, Section 1.1.1.A. In the second offering, Verizon provided a "CLEC-Provided Line Card Option." According to Illustrative Tariff DTE 17, Part F, Section 1.1.1.D:

At the option of the CLEC, PARTS will be provisioned with a CLEC-provided line card (i.e., plug and play) so as to provide the means for CLECs to place compatible DSL-capable integrated line cards into remote terminals in conjunction with their PART service. This option is not available with Telephone Company retail voice service.

1. Next generation digital loop carrier (as referenced in this tariff) is the equipment in the RTEE which provides slots to place ADSL digital line cards. The ADLU card is an ADSL service card which, in combination with the rest of the NGDLC hardware and software, splits/combines the voice and data signal and packetizes the data providing ATM data transport to the customer's serving wire center.
2. The CLEC may provide the compatible ADSL integrated line card for CLEC Data with CLEC dial tone service or for the CLEC data-only service. CLECs may provide their own line card in either a virtual or physical collocation arrangement using any line card approved by Telephone Company for use in the NGDLC remote terminals.

- a. The approved line cards that designate which can be used in which remote terminal are listed at [www.YYYYY.com](http://www.YYYYY.com).

Verizon set forth a number of different subsections relating to each of the two offerings, including different provisions for ordering, maintenance and CLEC responsibility, depending upon whether the offering is “PARTS” or “PARTS with the CLEC-Provided Line Card Option.”

Based on Verizon’s filing, the Department held hearings with considerable focus on the differences between the two options, the advantages and disadvantages of each, and the circumstances under which existing law requires or permits one option or the other. Initial briefs were filed on December 18, 2001, and reply briefs were filed on January 8, 2002. The case is now pending for decision.

### **Comments**

**A. Verizon’s March 7 Filing Provides So Little Information That It Is Not Possible Even To Determine Whether Verizon Is Offering Either Of The Options That It Proposed In the Illustrative Tariff That Has Been Litigated In This Case.**

In its March 7 filing, Verizon informed the Department of plans to provide “high-speed data connectivity over specialized Next Generation Digital Loop Carrier (NGDLC) equipment to be deployed at selected remote terminal locations.” NGDLC loops are fiber fed loops with a capability at the remote terminal for the insertion of a line card (*e.g.*, ADSL combo card) which converts the DSL signal traveling over the copper distribution portion of the loop to a “packetized” signal that can travel over the fiber portion of the loop. Put simply, Verizon has announced plans to deploy DSL capability over fiber-fed loops without the need to place a DSLAM in the remote terminal – the precise functionality for which Verizon filed an illustrative tariff pursuant to Department order in this case.

While the mere fact of the March 7 filing is a remarkable admission given Verizon’s claims in D.T.E. 01-20 that the functionality announced by the March 7 filing is technically

infeasible, the deliberate ambiguity of the filing's contents is even more extraordinary in the context of this docket. In this docket, the Department had ordered, and Verizon purported to file, an illustrative tariff "that would enable CLECs to place or have Verizon place CLEC-purchased line cards in Verizon DLC electronics at the RT." *Phase III Order*, at 87. The Department conducted hearings, developed a record and solicited briefs on the illustrative tariff. The details, where provided by Verizon, were addressed, and the necessary details that Verizon did not provide were noted. The purpose of this exercise was to hammer out the details of Verizon's provision of DSL over fiber using line cards at the remote terminal, before Verizon deployed such capability for its own use. *Phase III Order*, at 88-89.<sup>2</sup> Yet, despite this effort, Verizon has now filed a cryptic "notice" announcing the anticipated availability of DSL over fiber using line cards at the remote terminal and coyly omitting any reference to any of the terms and conditions that have been litigated, or indeed any of the issues that have been considered, in this docket.

Notwithstanding Verizon's effort to avoid any connection between its March 7 filing and the options that have been litigated to date, Verizon has provided very limited, and sometimes conflicting, hints. Verizon describes its anticipated offering using Next Generation Digital Loop Carrier equipment as a "wholesale *end-to-end* packet data *service* between a Network Interface Device (NID) at an end user location and a data carrier's Point of Termination (POT) in the end user's serving central office (CO) " (emphasis added). An "end-to-end service" suggests a

---

<sup>2</sup> As the Department stated:

[S]ince by their very nature, tariff proceedings are time consuming, we find that it would be fundamentally unfair to CLECs, and to consumers, to allow Verizon's data affiliate, which Verizon has indicated will be operational by January 2001 (Tr. at 12), to deploy the technology that would allow plug and play, or to deploy the "infrastructure to support wholesale packet transport services from [Verizon's] RTs" and only then file with the Department a proposed tariff offering for CLECs to do the same. Covad argues persuasively that it is not enough to permit CLECs to have access to plug and play only after Verizon or its affiliate deploys actual retail services because it would take CLECs several months to be in a position to offer their own services using this technology (Covad Brief at 19 n.31).

*Phase III Order*, at 88-89 (footnotes omitted).

wholesale offering that Verizon intends to price at a level of its own choosing, and given that there is not a single competitor offering NGDLC loops, there is no reason to expect that the price Verizon plans to charge will be anywhere near economic cost. On the other hand, Verizon's language refers to "access" at the "remote terminal," suggesting access to unbundled subloop elements at the remote terminal. (It is perhaps too much to hope that such access will be accomplished through the collocation of a line card.)

The one thing that is clear is that Verizon is not. We simply do not know what Verizon has in mind. The Department should not permit Verizon to play these kinds of games. The Department should order Verizon to set forth immediately the details, terms and conditions that it is proposing. The Department should make it clear to Verizon that Verizon will not be permitted to utilize the capability of providing DSL service over fiber fed loops for purposes of providing service at retail (either through its affiliate or itself) until such capability is provided to CLECs on non-discriminatory terms and conditions and at non-discriminatory (*i.e.*, TELRIC) prices.

**B. The Nature and Scope Of Verizon's Legal Obligations Relating to The Provision of DSL Over Fiber Cannot Be Fully Determined Until Verizon Provides Details Regarding Technology, Terms and Conditions and Scope of Planned Deployment.**

Only after Verizon has set forth the details will it be possible to determine the nature and scope of Verizon's legal obligations related to the provision of this capability to CLECs. Those details must include not only the terms and conditions under which Verizon will make DSL over fiber capability available to CLECs but also the technical details of the technology and the extent of Verizon's planned deployment. For example, it was only in the context of concrete details regarding technical specifications and Ameritech's planned deployment at 2100 remote terminals was it possible for Illinois Commission to consider Ameritech's legal obligation to provide its DSL over fiber architecture to CLECs as an unbundled network element. *See, Illinois Bell*

*Telephone Company Proposed implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service*, Illinois Commerce Commission, Case no. 00-0393 (September 26, 2001) (“*Illinois Bell Order*”), at 36. (A copy of the *Illinois Bell Order* is attached hereto for the Department’s convenience.)

The Illinois case, where the full details of the ILEC’s planned deployment were available, is instructive here. In that case, the Illinois Commission found on the basis of its staff’s analysis and recommendation that it had the power to order the unbundling of Ameritech’s Project Pronto architecture in Illinois (the same architecture upon which Verizon’s “PARTS” proposal is based) and to require Ameritech to make it available to competing carriers at TELRIC prices. Staff’s analysis had recognized that the FCC’s rules require unbundling of Project Pronto style architecture only in the limited circumstances spelled out in 47 CFR 51.319, because it contained what the FCC believed was “packet switching.” *See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order, No. FCC 99-238 (released November 5, 1999) (“*UNE Remand Order*”), at ¶ 313. The staff also noted, however, that the FCC itself had expressly reserved to state commissions the authority to unbundle packet switching technologies, notwithstanding FCC rules. *See, Illinois Bell Order*, at 24, citing *UNE Remand Order*, at ¶ 312. In this case, only after Verizon has provided the details and full scope of its planned deployment of the offering described in its March 7 filing will the Department be able to determine Verizon’s unbundling obligations.

**C. The Department Should Require Verizon To Set Forth Necessary Details Immediately and Permit CLECs To Commence Discovery Forthwith.**

As stated above, at the outset Verizon should be required to state the terms and conditions under which Verizon is providing the DSL over fiber capability. Indeed, stating whether Verizon is planning to offer the options described in its illustrative tariff would be a start. But Verizon



will need to go beyond that. Moreover, now that Verizon's plans have crystallized, Verizon should be ordered to provide the extent of its planned deployment and the locations of planned deployment, *i.e.*, to specify each of the RTs where its NGDLC architecture will be deployed.

Beyond the basics, there was much left unsaid in the earlier phase of this proceeding addressing the illustrative tariff that must now be addressed. Covad in its December 17, 2001 initial brief, for example, identified several unresolved operational issues related to the illustrative tariff that had been raised through discovery:

- (1) the maintenance window for performing work on Litespan 2000 equipment that contains CLEC-owned line cards (CVD-VZ-2-2);
- (2) what procedures [Verizon] will apply to determine whether CLEC line cards can be added to the list of approved equipment (as discussed in Section 1.1.1.D.2.a of the Tariff) (CVD-VZ-2-3);
- (3) how [Verizon] wants CLECs to manage the inventory of line cards to be collocated in RTs (CVD-VZ-2-4);
- (4) how [Verizon] will return unused line cards to the inventory (CVD-VZ-2-8); and
- (5) what process will govern the waiving of termination liability (imposed under Sections 1.5.1 & 1.5.2 of the Tariff) if CLEC disconnections result from provisioning delays beyond the CLEC's control and/or are caused by Verizon (CVD-VZ-2-5).

Covad Initial Brief (December 17, 2001), at 5. Now that Verizon is proposing a concrete offering, the Department and the parties should pursue these unresolved issues.

In addition, there will be a number of factual issues that will relate to whether and under what circumstances Verizon's will be obligated under 47 CFR 51.319 to unbundle and provide at TELRIC based prices the DSL over fiber functionality it is proposing. The Illinois Commission, for example, was persuaded by its staff's analysis which found that where the DSL over fiber capability is serving as a means of providing connectivity for high speed transmission, as was the case with the Project Pronto architecture, "the packet switching exemption does not provide

Ameritech with a compelling argument against unbundling.” *Illinois Bell Order*, at 25 (citing to a Texas arbitration decision in which “the arbitrators specifically found that the Project Pronto architecture is designed to, and in fact does, replace copper facilities, depriving CLECs of means to serve customers other than over the Project Pronto network”). Clearly, to the extent those same facts apply here, the Department is entitled to, and should, reach the same conclusion.

Moreover, there will be additional factual issues that must be resolved in order for the Department to determine whether and under what circumstances the Department should require Verizon to unbundle the DSL over fiber functionality *under state law*. The Illinois Commission, for example, in applying the “impair” test under 47 CFR 51.317 for requiring the unbundling of network elements under state law was persuaded by its staff’s analysis, which focused on the lack of viable alternatives to competing carriers seeking to provide DSL service to customers linked to a central office by a fiber facility. The Illinois Commission stated:

Staff argues that numerous proceedings have made clear that alternatives to the unbundling of Project Pronto are, in reality, often no alternatives at all. Staff Ex. 1.0 at 3. For example, Ameritech contends that a CLEC that wants to provide data services in an area served by Project Pronto could collocate at the remote terminal (“RT”) and purchase dark fiber from Ameritech (if available) or purchase fiber capacity from a third party. *Id.* However, operational and administrative obstacles, particularly the lack of space in RTs, often would make collocation at the RT impossible. *Id.* Even where RT collocation is possible, the number of customers served by a single RT often makes leasing collocation space an excessively costly alternative on a per-customer basis. *Id.* at 3-4. Staff believes it is not a feasible alternative, technically or economically, to require a CLEC to collocate at each and every RT, many of which might terminate only a few hundred sub-loops. *Id.*

*Illinois Bell Order*, at 27. Indeed, the nature and scope of the functionality that Verizon will deploy will be critical to determining whether there are viable alternatives for providing DSL over fiber. The more extensive Verizon’s planned deployment, the greater the proof that acceptable alternatives are not available. As the the Illinois Commission stated:

In sum, competitors will be impaired significantly in their efforts to compete with Ameritech if they do not have unbundled access to Project Pronto. *The very fact that SBC viewed the existing alternatives as insufficient in order to provide ubiquitous DSL coverage is itself a strong argument for unbundling Project Pronto.*

*Id.* at 29 (emphasis supplied).

In order to put as much of the detail of Verizon's anticipated offering on the record as quickly as possible, the Department should – in addition to ordering Verizon to produce such information immediately – allow the other parties to commence discovery forthwith.

Information that AT&T seeks includes technical details and limitations of the equipment Verizon expects to use, similarities and differences between Verizon's proposed offering and Project Pronto, the extent of Verizon's planned deployment, the locations of planned deployment, the factors that affect the decision regarding which locations are suitable, and the availability of alternatives to reach end-users presently served by hybrid copper/fiber loops. Because it is important that these issues be resolved quickly and expeditiously, it is important that the parties begin their discovery right away. Delay is not in the interest of Massachusetts' consumers.

**D. The One Term That Verizon Should Not Be Allowed To Propose Is The Wholesale Rate Because That Term Is Being Decided In D.T.E. 01-20.**

As the Department knows, in D.T.E. 01-20 Verizon failed to propose rates for hybrid fiber/copper loops capable of providing DSL service on the ground that no such thing existed. At the same time, however, the record in D.T.E. 01-20 demonstrated that Verizon had been planning during 2000 and 2001 operation support systems to allow CLECs to order DSL capable loops that are fiber fed. *See*, AT&T Reply Brief at 121, filed March 29, 2002, in D.T.E. 01-20. Thus, in an apparent attempt to avoid filing a rate for DSL capable loops that are fiber fed, Verizon was denying its technical feasibility despite the fact that Verizon had long been planning to introduce it to market. Apparently, Verizon's interest is in the delay that will result from litigating a wholesale rate in this case now, after Verizon has already developed the ability to

offer the service to its retail end-users. In that way, Verizon will get a headstart over its competitors.

The Department should not allow Verizon to game the system by proposing a rate now, in this proceeding. The Department should base the wholesale rate on the evidence that AT&T adduced in the docket that was opened for the purpose of determining wholesale rates.

### **Conclusion**

For the foregoing reasons, the Department should order Verizon to provide the necessary details of its proposed offering immediately and permit the other parties to propound discovery to Verizon forthwith. No time should be wasted in the effort to deploy the capability of DSL service over fiber-fed loops to Massachusetts consumers.

Moreover, in order to ensure that Verizon has the same incentives that the Department and the CLECs have to roll out this offering as soon as possible, the Department should make clear to Verizon that Verizon will not be permitted to provide DSL service over fiber fed loops to retail end users until Verizon offers the unbundled network elements to CLECs that will enable them to offer a comparable retail service *no later than Verizon does*. If Verizon is allowed to offer DSL over fiber to retail customers before CLECs are able to, it will have defeated the Department's objectives, clearly articulated in its *Phase III Order*, at 88, that Verizon not obtain an unfair advantage through regulatory delays.

Respectfully submitted,

---

Jeffrey F. Jones  
Kenneth W. Salinger  
Jay E. Gruber  
Kevin Prendergast  
PALMER & DODGE LLP  
111 Huntington Avenue  
Boston, MA 02199-7613  
(617) 239-0100

Mary E. Burgess  
AT&T Communications of New England, Inc.  
111 Washington Avenue  
Albany, NY 12210-0000  
(518) 463-3148

April 9, 2002